

ORIGINAL

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MM Docket No. 00-102

In the Matter of)
)
Amendment of Section 73.202 (b)) RM-9888
Table of Allotments,)
FM Broadcast Stations)
(Charlotte Amalie, Frederiksted, and)
Christiansted, Virgin Islands))

RECEIVED
AUG 8 2000
FCC MAIL ROOM

To: The Chief, Allocations Branch

JOINT REPLY COMMENTS

Island Prime Media ("petitioner"), jointly with Jose J. Arzuaga ("Arzuaga"), licensee of FM broadcast station WQQZ, Quebradillas, Puerto Rico ("WQQZ"), by their counsel, herewith submit their reply comments in the above-captioned proceeding as follows:

1. Petitioner and WQQZ oppose the counterproposal submitted by Aurio A. Matos and Juan Carlos Matos, permittee of FM broadcast station WXZX, Culebra, Puerto Rico ("WXZX"). WZZX requests that its assigned channel (254A) be changed to 254B1. In order to effectuate its proposed upgrade, WZZX proposes the following changes:

- (a) Modify the proposed Charlotte Amalie channel from 257A to 258B1.
- (b) Modify the proposed Frederiksted channel from 258A to 248A.
- (c) Modify the current WUKQ channel from 254B to 253B.
- (d) Modify the current WXZX from 254A to 254B1.
- (e) Modify the WVIQ channel from 258B to 293B.

No. of Copies rec'd 014
List ABCDE

2. This proposal is contrary to a number of the Commission's rules and policies as outlined herein. The WXZX proposal requires a modification of four other channels, including two existing stations and two proposed, contrary to Commission policy for improvement of a single facility. With respect to the proposed modification of WUKQ, this is precluded by the existing application of New Educational Broadcasting Corporation ("NEBC") for Channel 251A at Sta. Isabel, PR (BPED-950908MC). The change of WUKQ to 253B would result in a short spacing of 4.54 kilometers to the NEBC application (see attached Engineering Exhibit). The NEBC application is not precluded by the current allocation for WUKQ (*Id.*).

3. WXZX argues that its proposal will allow an upgraded channel at Charlotte Amalie on the island of St. Thomas. However, it precludes a similar upgrade at Frederiksted, St. Croix, which could otherwise be effectuated (258B1 can be assigned to either Frederiksted or Charlotte Amalie). In this regard, petitioners respectfully request that their original proposal be modified to specify Channel 258B1 rather than 258A at Frederiksted. It is noted that Ch. 258A would be eligible for a one-step up-grade in any event. Island Prime Media hereby affirms that if it is the successful applicant for the Frederiksted facility, it will immediately apply for a one-step upgrade to Ch. 258B1 if the requested modification to a B1 allocation is not adopted in this rulemaking proceeding. In comparison with Charlotte Amalie, which would have 9 FM frequencies, Frederiksted would only have 4. Further, Frederiksted is on the larger island of St. Croix, which has a greater need for the higher-powered facility to better cover its larger area. Therefore, there is a greater need for the higher-powered facility on Frederiksted.

4. The WXZX proposal further complicates the implementation process in Docket No. 91-259, which is the primary interest of WQQZ in this counter-proposal. Pursuant to Docket No. 91-259, WQQZ has been ordered to change channel and has been granted a construction permit to do so. However, WQQZ is precluded from doing so until other stations (including WUKQ, WPRM-FM, WSAN-FM and others) implement their channel change. Furthermore, WQQZ has had difficulty obtaining a building permit at its proposed new tower site. Should this building permit not be forthcoming in a timely manner, WQQZ could be forced to move to an alternate site in order to permit the entire chain of station moves ordered in Docket 91-259 to be implemented.

5. The already complicated implementation process in connection with Docket 91-259 would be further exacerbated by the WXZX proposal since it could preclude WQQZ from moving to an alternate site if required (which is a possibility if a building permit is not issued at the authorized c.p. site). As outlined in the attached Engineering Statement, WQQZ has identified two alternate sites for its proposed operation. Both of these sites would be precluded if the WXZX upgrade were adopted. At a minimum, the Commission should hold the WXZX proposal in abeyance pending implementation of Docket 91-259 since that proposal could impact adversely on the implementation process, which is already extremely complicated.

6. It is also noted that JKC Communications of the Virgin Islands, Inc. ("JKC") has submitted comments in this proceeding, requesting certain relief relating to reimbursement of expenses. *JKC* seeks to assure that it will be reimbursed for its proposed channel change. In the NPRM adopted in this proceeding (DA 00-1221, released June 2, 2000), the Commission stated, at para. 3:

Whenever an existing licensee or permittee is ordered to change frequencies in order to accommodate a new channel allotment, Commission policy requires the benefitting party to reimburse the affected station for costs incurred. In this case, petitioners have not stated their willingness to reimburse the licensee of Station WVIQ-FM affected stations for the reasonable costs associated with its frequency change. See Columbus, Nebraska, et al., 59 RR 2d 1184 (1986). Petitioners are requested to state their willingness to reimbursement JKC Communciations of the Virgin Islands for reasonable costs incurred for the channel change. Failure to do so, may result in the dismissal of this proposal.

7. In Comments submitted in this proceeding, the petitioners indicated their willingness to reimburse expenses if their proposal was adopted and they obtained the construction permit. WXZX had made no such commitment in its counter-proposal despite the Commission's clear language that failure to provide such a statement could result in "dismissal" of the proposal. Accordingly, the WXZX counter-proposal should be dismissed as patently defective.

8. Furthermore, if the original proposal is not adopted, the original petitioners should not be required to bear the expense of channel changes that might be adopted as a result of the counter-proposal. If the Commission determines to consider the counter-proposal at all, it should do so only after receiving a statement from WXZX that it will bear the sole responsibility for reimbursement of expenses in this proceeding, including the expenses of WVIQ and WUKQ. It is clear that WXZX would be the benefitting party from these changes if its counter-proposal were adopted. Indeed, the counter-proposal would be contrary to the interests of Island Prime Media, which would be precluded from upgrading to a B1 facility. Accordingly, the Commission should make WXZX the sole responsible party for reimbursement in this proceeding if the counter-proposal is adopted,

and should require WXZX to declare its willingness to accept that responsibility before any further consideration of its counter-proposal.

9. In conclusion, the counter-proposal submitted by WXZX is defective because: (a) It requires the disruption of too many other facilities; (b) it will disrupt the implementation of Docket 91-259; and (c) WXZX has failed to provide a statement that it will reimburse the expenses of the stations required to change channels as a result of its counter-proposal. Furthermore, the public interest will be better served by allocating the higher-powered facility to Frederiksted rather than Charlotte Amalie.

WHEREFORE THE PREMISES CONSIDERED, it is respectfully requested that the WXZX counter-proposal be dismissed as defective and/or denied.

Respectfully submitted,

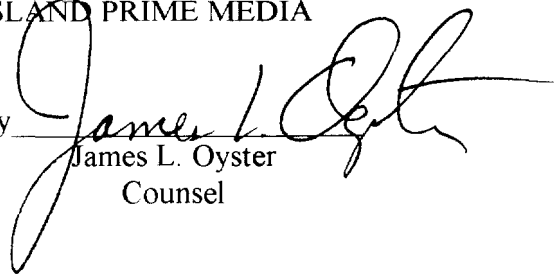
Law Offices
JAMES L. OYSTER
108 Oyster Lane
Castleton, Virginia 22716-9720

(540) 937-4800

August 8, 2000

JOSE J. ARZUAGA
ISLAND PRIME MEDIA

By



James L. Oyster
Counsel

ENGINEERING EXHIBITS

OCEAN PRIME MEDIA ALLOTMENT CH. 257A

CHARLOTTE AMALIE, VI

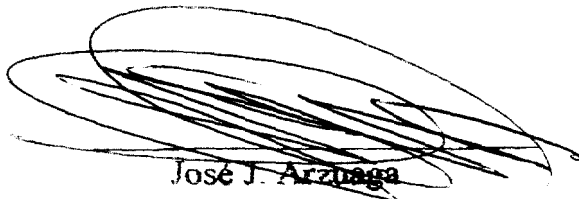
ISLAND PRIME MEDIA, ALLOTMENT CH. 258A

FREDERIKSTED, VI

By: José J. Arzuaga
Consultant for Ocean Prime Media
Island Prime Media

I, José J. Arzuaga, certify that I am a Consulting Radio and T.V. Engineer, that my qualifications are known to the Federal Communications Commission and I prepared this statement.

I further state that the calculations and exhibits contained herein were prepared by me personally or under my direction and that all facts contained therein are true of my knowledge except where stated to be on information or belief, and as those facts, I believe them to be true.



Handwritten signature of José J. Arzuaga, consisting of several overlapping loops and a long horizontal stroke.

Date:

8/4/2012

ALLOCATION COMMENTS

Before the Federal Communications Commission is an application on behalf of José Arzuaga, Jr. d.b.a Ocean FM Media for an assignment of Channel 257A for Charlotte Amalie, VI. Also, José J. Arzuaga d.b.a. Island Prime Media has an application Frederiksted, VI.

Also filed with the Commission is a contraproposal by WXZX. WXZX requests that Channel 254A be changed to 254B1. Objection to this contraproposal is presented for the following reasons:

In order to achieve this improvement to Channel 254A in Culebra from A to B1, the following changes are necessary:

- (1) Move WUKQ, Mayaguez from 254B to 253B
- (2) Move from Channel 258A to 248A for Frederiksted, VI.
- (3) Move from Channel 257A to 258B1 application for Charlotte Amalie, VI.
- (4) Impact on new Channel 251A assignment for Sta. Isabel, PR. This results from the fact that applicants, New Educational Broadcasting Corporation, Inc. (950908MC) is short spaced by 4.54 km. Since the new regulations are in effect, this is acceptable. However, with the proposed change of WUKQ-FM from 254B to 253B, New Educational Broadcasting would no longer have a standing in the application for Sta. Isabel, the first outlet for that community. (See engineering Exhibit).

Instead of such excessive shifting of assignments and applications, the same can be achieved with the first allocation request filed with the FCC.

- (1) 257A for Charlotte Amalie, VI
- (2) 258A for Frederiksted, VI (If the should desire, Channel 258A can be allotted as 258B1 wich would be in the public interest.

The disruption of the band in this service area requires simplification not complication. WXZX is operating on an STA on Channel 293A in Culebra without solid legal basis. It can only do so until WVIS commences operation on its assigment of 291B when it must vacate Channel 293A immediately. It cannot operate on its assigned channel of 254A until other channel changes are carried out involving a number of other stations including WQQZ-FM, WUKQ-FM, WPRM-FM, WSAN-FM and others.

N 18 14 52 W 66 48 43 references point (2) N 18 14 06 W 66 45 36. This would immediately free WXZX (STA). This would immediately free WXZX (STA) to move to its legal assigned frequency of 254A as there would no longer be a wait for WQQZ to obtain a Building permit for its CP designated site as they would be operating on the channel assigned by their CP, but at an alternative site.

WQQZ Concurs with the rulemaking presented by José Arzuaga, Jr. d.b.a. Ocean FM Media that Charlotte Amalie "be assigned 257A and José J. Arzuaga, Jr. Island Prime Media, Frederiksted" by assigned 258A.

WQQZ would also favor Charlotte Amalie with the same 257A but with Frederiksted assigned Channel 258B1 as this would be in the public interest as service on Channel 258 would be augmented.

FM Spacing Study

Title: Frederiksted, VI
Channel: 258B1 (99.5 MHz)
Database: FCC 12/27/1999 12:00:00

Latitude: N 17° 44' 51"
Longitude: W 64° 50' 11"
Safety Zone: 45.0 km

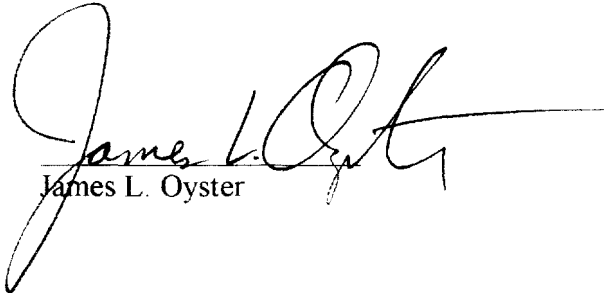
Call City of License	Auth	Licensee name St.	FCC File Number	Chan Freq.	MATF(m) (HAMSL(m))	ERP (kw)	Latitude Longitude	Br-to from	Dist. (Km)	Req. (km)
WEUC-1 Caguas	Lic	Catholic University of Puerto RI PR	BLFTB-940818TA	205 D 88.9	380.0	0.25 H	N 18° 09' 16.0" W 66° 04' 51.0"	287.7 107.2	155.5 138.5	17.00 CLEAR
DA: SCA CA-2H @ 330.0°										
WSAN Vieques	Lic	Carlos J. Colón Ventura PR	BLH-911210KB	255 B 98.9	229.0 230.0	50 H 50 V	N 18° 19' 39.0" W 65° 18' 05.0"	315.1 134.9	92.91 18.91	74.00 CLEAR
To amend to channel 252A, Las Piedras, PR Per D91-259										
ALLOC San Juan	VACA	PR		256 B 99.1			N 18° 06' 45.0" W 66° 03' 07.0"	286.3 105.9	151.3 77.30	74.00 CLEAR
Effective 8-7-95-RSVD For WPRMFM Per D91-259										
ALLOC Quebradillas	USED	PR		258 B 99.5			N 18° 08' 59.0" W 66° 58' 59.0"	281.1 100.4	248.3 37.30	211.0 CLEAR
Reserved for WQQZ per One-Step Application BPH-950807ID										
WQQZ Quebradillas	CP	José J. Arzuaga PR	BPH-950807ID	258 B 99.5	640.0 946.0	22 H 22 V	N 18° 09' 00.0" W 66° 59' 00.0"	281.1 100.4	248.4 37.29	211.0 CLEAR
WIOA San Juan	Lic	Cadena Estereotempo, Inc. PR	BLH-980911KC	260 B 99.9	560.0 787.0	31 H 31 V	N 18° 16' 44.0" W 65° 51' 12.0"	296.1 115.8	138.1 64.10	74.00 CLEAR

CERTIFICATE OF SERVICE

James L. Oyster hereby certifies that he has sent a copy of the foregoing Informal Objection by first class U.S. mail, postage prepaid, or by hand delivery, on or before the 8th day of August, 2000, to the following:

Shelley Sadowsky, Esq.
Rosenman & Colin, L.L.P.
805 15th Street, N.W.
Floor 9
Washington, D.C. 20005-2212

Aurio & Juan Carlos Matos
WXZX
P.O. Box 847
Mayaguez, PR 00681



James L. Oyster